

*Livany*

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
JONES AND ROBERTS COMPANY, )  
Appellant, )  
v. )  
OLYMPIC AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

PCHB No. 707

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER being the appeal of a \$100 civil penalty for an alleged open burning violation of respondent's Regulation I; having come on regularly for a formal hearing before the Pollution Control Hearings Board on the 9th day of July, 1975, at Lacey, Washington; and appellant Jones and Roberts Company appearing through its superintendent, Robert Wootan and respondent Olympic Air Pollution Control Authority appearing through its attorney, Fred D. Gentry; and Board member present at the hearing being chairman Chris Smith; and the Board having entered on the 18th day of July, 1975, its proposed Findings

1 of Fact, Conclusions of Law and Order, and the Board having served  
2 said proposed Findings, Conclusions and Order upon all parties  
3 herein by certified mail, return receipt requested and twenty days  
4 having elapsed from said service; and

5 The Board having received no exceptions to said proposed  
6 Findings, Conclusions and Order; and the Board being fully advised  
7 in the premises; now therefore,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
9 Findings of Fact, Conclusions of Law and Order, dated the 18th day  
10 of July, 1975, and incorporated by this reference herein and  
11 attached hereto as Exhibit A, are adopted and hereby entered as  
12 the Board's Final Findings of Fact, Conclusions of Law and Order  
13 herein.

14 DONE at Lacey, Washington, this 26th day of August, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16   
17 CHRIS SMITH, Chairman

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19 W. A. GISSBERG, Member  
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26 FINAL FINDINGS OF FACT,  
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CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 26<sup>th</sup> day of August, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Robert Wootan, Superintendent  
Jones & Roberts Company  
4130 South Adams  
Tacoma, Washington 98409

Mr. Fred D. Gentry  
Bean, Gentry and Rathbone  
P. O. Box 2317  
Olympia, Washington 98507

Olympic Air Pollution Control Authority  
120 East State Avenue  
Olympia, Washington 98501



LARENE BARLIN  
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
JONES AND ROBERTS COMPANY, )  
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Appellant, )  
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v. )  
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OLYMPIC AIR POLLUTION )  
CONTROL AUTHORITY, )  
 )  
Respondent. )

PCHB No. 707

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith, Chairman, at a formal hearing in the Board's office in Lacey on July 9, 1975. Hearing Examiner, David Akana, presided.

Appellant appeared through its superintendent, Robert Wootan; respondent appeared through its attorney, Fred D. Gentry. Jenni Rowland, Olympia court reporter, recorded the proceeding.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

Having heard the evidence, having examined the exhibits, and having considered the contentions of the parties, the Pollution Control Hearings Board makes these

#### FINDINGS OF FACT

##### I.

Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d Ex. Sess. (RCW 43.21B.260), has filed with this Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto.

##### II.

Section 9.01 of respondent's Regulation I requires a permit for open fires for other than those specifically enumerated in said section. The section also prohibits the burning of materials containing asphalt, paint, and plastic. Section 3.27 authorizes a civil penalty of not more than \$250 for each violation of Regulation I. Section 9.01(e) provides for a presumption that the person who controls property on which an open fire occurs has caused or allowed said fire.

##### III.

Appellant is a contractor who was involved in the construction of new facilities at the Evergreen State College. Appellant had burned its construction wastes in open fires many times in the past. It had no actual knowledge of the requirement that a burning permit be obtained for open burning.

##### IV.

On June 7, 1974, respondent's inspector visited the site controlled by appellant. On the site, the inspector observed a fire which contained

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

a number of pieces of large sheet plastic, asphaltic material, paint can., and general garbage. No permit of any kind for the fire was produced. Notice of Violation No. 544 was issued to appellant from which a notice of civil penalty assessing a fine of \$100 followed. This penalty is the subject matter of this appeal.

V.

Appellant had, at the time of the incident, admitted responsibility for the fire. Appellant has subsequently assigned responsibility for the fire to a subcontractor, i.e., the carpet layers. However, we find that the responsibility for the fire and the materials therein lies with the appellant.

VI.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

On June 7, 1974, appellant violated Section 9.01 of respondent's Regulation I by failing to have an open burn permit and by burning prohibited materials in an open fire.

II.

There being no attack as to the reasonableness of the civil penalty, we hold that the civil penalty is reasonable.

III.

Any Finding of Fact which should be deemed a Conclusion of Law is  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 hereby adopted as such.

2 From these Conclusions, the Pollution Control Hearings Board enters  
3 this

4 ORDER

5 The appeal is denied and the \$100 civil penalty is affirmed.

6 DATED this 18th day of July, 1975.

7 POLLUTION CONTROL HEARINGS BOARD

8 Chris Smith  
9 CHRIS SMITH, Chairman

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27 FINDINGS OF FACT,  
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